

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
NORTHERN DIVISION

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UNITED STATES OF AMERICA,

CR 17-10017

Plaintiff,

MOTION TO DISMISS INDICTMENT

vs.

SAMANTHA FLUTE,

Defendant.

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Comes now Defendant Samantha Flute, by and through her attorney, Assistant Federal Public Defender Edward G. Albright, and moves this Court for an Order dismissing the indictment. This motion is based on the following grounds:

1. The indictment charges Ms. Flute with involuntary manslaughter for the death of her newborn son based on her prenatal ingestion of prescribed and over-the-counter medicines in a grossly negligent manner. All of the alleged criminal acts occurred while Ms. Flute was pregnant and before Baby Boy Flute was born. This conduct is not prohibited by federal law. In fact, federal law expressly bars the prosecution of any woman with respect to her unborn child. 18 U.S.C. § 1841(c)(3). Further, an unborn child is not a “human being” within the meaning of the federal involuntary manslaughter statute. 18 U.S.C. § 1112(a); 1 U.S.C. § 8(c) (defining “human being”). The indictment fails to state an offense under FED. R. CRIM. P. 12(b)(3)(B)(v).

2. The federal involuntary manslaughter statute is unconstitutionally vague as applied in this case in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

A memorandum in support of this motion has been filed and is incorporated by this reference.

Dated this 2nd day of June, 2017.

Respectfully submitted,

NEIL FULTON  
Federal Public Defender  
By:

*/s/ Edward G. Albright*

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